No. 18-966

IN THE

Supreme Court of the United States

DEPARTMENT OF COMMERCE, *et al.*,
Petitioners,

v.

STATE OF NEW YORK, *et al.*,
Respondents.

On Writ of Certiorari Before Judgment to the United States Court of Appeals for the Second Circuit

BRIEF OF THE AMERICAN STATISTICAL ASSOCIATION, AMERICAN SOCIOLOGICAL ASSOCIATION, POPULATION ASSOCIATION OF AMERICA, AND AMERICAN LIBRARY ASSOCIATION AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

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STATEMENT OF INTEREST

The American Statistical Association, American Sociological Association, Population Association of America, and American Library Association respectfully submit this brief as *amici curiae*.[1] *Amici curiae*

[1] No party or counsel for a party authored or paid for this brief in whole or in part, or made a monetary contribution to fund the brief's preparation or submission. No one other than *amici*

are leading national associations of professional and academic statisticians, sociologists, demographers, and librarians who have a strong interest in, and regularly rely on, the integrity of the data produced by the United States Census Bureau (the Bureau), including the results of the decennial census that the Constitution requires. *Amici* have a strong interest in ensuring that their members and the public at large continue to benefit from the accurate and trustworthy data that the Bureau has historically generated through the census.

The American Statistical Association is the world's largest community of statisticians and one of the oldest continuously operating professional science societies in the United States. Its members generally hold advanced degrees and serve in industry, government, and academia in more than 90 countries, advancing research and promoting sound statistical practice to inform public policy. With over 18,000 members, who are primarily but not exclusively located in the United States, the American Statistical Association is the "Big Tent for Statistics" worldwide. Since its founding in 1839, the American Statistical Association has supported excellence in the development, application, and dissemination of statistical science through meetings, publications, membership services, education, accreditation, and advocacy.

The American Sociological Association is the national professional and scholarly association of sociologists in the United States. Founded in 1905,

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or their members or counsel made a monetary contribution to the brief. All parties have consented to the filing of this brief.

the organization has almost 12,000 members and publishes twelve leading peer-reviewed journals. The American Sociological Association is a nonprofit membership association dedicated to advancing sociology as a scientific discipline and profession that serves the public good.

The Population Association of America is a nonprofit, scientific organization of professionals from multiple disciplines engaged in the scientific study of population. Its common purpose is to advance knowledge and understanding of the causes and consequences of population composition, processes, and change. Founded in 1931, the Population Association of America now has over 3,000 members, who include demographers, sociologists, economists, public-health professionals, and other individuals interested in research and education in the population field.

The American Library Association is the foremost national organization providing resources to inspire library and information professionals to transform their communities through essential programs and services. Founded in 1876, today the American Library Association has more than 58,000 members. For more than 140 years, the American Library Association has been the trusted voice for academic, public, school, government, and special libraries, advocating for the profession and the library's role in enhancing learning and ensuring access to information for all.

Amici curiae have a unique interest in ensuring the integrity of the data generated by the 2020 census. *Amici* are deeply concerned that an uncertain and untested change to that census will imperil the

accuracy, reliability, and utility of a core tool for their research and decisionmaking. And because *amici* so heavily rely on and use census data, they are further concerned that the addition of the citizenship question will cause lasting damage to the credibility and professional standing of the Bureau, one of the world's leading statistical agencies. The Commerce Department's last-minute decision to add a citizenship question to the decennial census, without any of the careful testing that is ordinarily required and over the objections of Census Bureau professionals, is grossly inconsistent with both statutory mandates and professional norms.

SUMMARY OF ARGUMENT

The decennial census is "a linchpin of the federal statistical system by collecting data on the characteristics of individuals, households, and housing units throughout the country." *Department of Commerce* v. *U.S. House of Representatives*, 525 U.S. 316, 341 (1999) (quotation marks and citation omitted). Charged with safeguarding the integrity of this critical data, the Bureau has historically set the world standard for a statistical agency, employing scientifically rigorous methods to generate trustworthy information. Like so many others, *amici* place their faith in this data source every day. Accurate and reliable census information features in an astonishing array of decisions, from where voters cast their ballots, to where small businesses choose to invest, to how the federal government allocates money, to how emergency responders prepare for natural disasters, among many others. As this Court has emphasized, our Nation has a "strong constitu-

tional interest" in census-data accuracy. *Utah* v. *Evans*, 536 U.S. 452, 478 (2002).

The U.S. Department of Commerce (the Department) has undermined that interest here. Its last-minute decision to add a citizenship question to the 2020 census will significantly jeopardize the integrity of the data that the census produces. Consistent with standard statistical practice, the Bureau maintains established procedures designed to generate accurate and robust data when the census uses a new question. The Bureau ordinarily conducts extensive field testing—often for many years—before adding a question to the decennial census. During this field-testing process, the Bureau ordinarily gives careful consideration to how an additional question might affect response rates and data accuracy. And the Bureau ordinarily proceeds with particular caution when a proposed addition threatens to cause fear among, and reduce participation by, vulnerable populations.

The Department's decision to add a citizenship question to the 2020 census has forced the Bureau to abandon these basic principles in this case. Disregarding the judgment and expertise of the Bureau's career staff—including the thorough and thoughtful analysis of the Bureau's Chief Scientist, John Abowd—the Department rushed to insert a citizenship question into the census, for the first time in seven decades, without *any* meaningful field testing. The Department mandated the addition of the citizenship question in March 2018—months after the Bureau's internal deadline for proposing new census questions had passed and years after the Bureau had begun preparing for the 2020 census without having ever considered such a question.

According to Commerce Secretary Wilbur Ross, the Department allegedly believes that adding a citizenship question will "prioritize[ ] the goal of obtaining *complete and accurate data*." Pet. App. 549a. But the Bureau's own analysis demonstrates that it will not. Instead, the Secretary's decision will throw into doubt the census data's integrity and utility. The Bureau's analysis shows that the overwhelmingly sensitive nature of the citizenship question will substantially reduce census participation rates, while generating a higher percentage of incomplete or inaccurate responses. Explaining the alleged basis for his decision, the Secretary asserted that there was no "definitive, empirical support" to conclude that the citizenship question would cause lower participation rates. *Id.* at 554a. That claim stands the appropriate statistical standard on its head, is inconsistent with the Bureau's longstanding practice of deliberative caution in adding questions to the census, and is deeply at odds with basic professional statistical norms.

The addition of a citizenship question in this hurried manner imperils the Bureau's enduring role as a leading statistical agency. It also threatens the integrity of census data, which influences everything from the operation of our economy to the fairness of our democracy. The last-minute addition of the citizenship question ignores established and widely shared statistical methods and principles. And it will have significant negative consequences for professional and academic researchers, like *amici*'s members, who count on accurate census data to help us better understand our world.

Given the numerous "classic, clear-cut * * * violations" of the Administrative Procedure

Act found by the District Court, Pet. App. 10a, based on extensive record evidence following a full and fair trial, the decision below should be affirmed.

ARGUMENT

I. THE DEPARTMENT'S LAST-MINUTE ADDITION OF A CITIZENSHIP QUESTION WAS INCONSISTENT WITH CENSUS BUREAU STANDARDS AND UNNECESSARILY THREATENS THE INTEGRITY OF CENSUS DATA.

A. The Bureau Abandoned Its Longstanding Practice Of Following Proper Statistical Procedures, Which Preclude Adding Questions To The Census Without Thorough Planning And Field Testing.

1. As this Court has recognized, the Bureau has a constitutional duty to conduct an accurate census. U.S. Const. art. I, § 2, cl. 3; *id.* amend. XIV, § 2; *Evans*, 536 U.S. at 478 ("strong constitutional interest in accuracy" of the census); *Wisconsin* v. *City of New York*, 517 U.S. 1, 19–20 (1996) (the Secretary may violate the Constitution if he unreasonably compromises "the distributive accuracy" of the census). The Bureau also has a statutory duty to conduct an accurate census, *see* 13 U.S.C. § 141 (note) ("[I]t is essential that the decennial enumeration of the population be as accurate as possible, consistent with the Constitution and laws of the United States."), and the Bureau's own regulations create a binding federal regulatory duty to conduct an accurate census, *see* 15 C.F.R. § 90.2 ("It is the policy of the Census Bureau to provide the most accurate population estimates possible.").

In addition, Congress has imposed on federal agencies—including the Bureau—generally applicable standards to ensure data quality and utility. The Paperwork Reduction Act, for example, works to "ensure the greatest possible public benefit from and maximize the utility of information created, collected, maintained, used, shared and disseminated by or for the Federal Government" and "improve the quality and use of Federal information to strengthen decisionmaking, accountability, and openness in Government and society." 44 U.S.C. § 3501(2), (4). And the Information Quality Act requires that federal agencies issue guidelines for "maximizing the quality, objectivity, utility, and integrity of information (including statistical information)." Consolidated Appropriations Act of 2001, Pub. L. No. 106-554, § 515(b)(2)(A), 114 Stat. 2763 (codified at 44 U.S.C. § 3516(b)(2)(A) (note)). Under federal regulations, when federal agencies prepare a survey, they must "design the survey to achieve the highest practical rates of response, commensurate with the importance of survey uses, respondent burden, and data collection costs, to ensure that survey results are representative of the target population so that they can be used with confidence to inform decisions." *See* Office of Mgmt. and Budget, *Standards and Guidelines for Statistical Surveys* § 1.3 (2006)[2]; *see also* 71 Fed. Reg. 55,522 (Sept. 22, 2006) (providing notice of decision to issue revised guidelines for statistical surveys, because "[i]t is essential that [statistics provided by the federal government] be collected, processed, and published in a manner that

[2] *Available at* https://bit.ly/2Jhql99.

guarantees and inspires confidence in their reliability").

The Bureau has developed and issued statistical quality standards in keeping with its constitutional, statutory, and regulatory duties to ensure census-data accuracy and integrity. These quality standards "apply to all information products released by the Bureau and the activities that generate those products," including the decennial census. U.S. Census Bureau, *Statistical Quality Standards* ii (2013).[3] When, as here, "[a]n existing data collection instrument has substantive modifications (*e.g.*, existing questions are revised or new questions added)," the quality standards provide that the modification "must be pretested with respondents to identify problems (*e.g.*, problems related to content, order/context effects, skip instructions, formatting, navigation, and edits) and then refined, prior to implementation, based on the pretesting results." *Id.* at 8. Pretesting "is a broad term that applies to many different methods or combinations of methods that can be used to test and evaluate questionnaires," *id.* at 12, including focus groups, *id.* at 13; cognitive interviews, in which respondents describe their thoughts while answering survey questions, *id.* at 14; or respondent debriefing, in which respondents are asked follow-up questions after having completed a questionnaire, *id.* at 18. Pretesting seeks to ensure, among other things, that questions "are not unduly sensitive and do not cause undue burden." *Id.* at 8. In this way, pretesting avoids adding questionnaire content that could cause "confusion,"

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[3] *Available at* https://bit.ly/2D7L2zB.

"misinterpretation," and "a loss of information." *Id.* at 12. "Multiple pretesting methods should be used as budget, resources, and time permits to provide a thorough evaluation of the data collection instrument and to document that the data collection instrument 'works' as expected." *Id.* at 9.

These guidelines are consistent with proper statistical practices. A leading treatise emphasizes the importance of careful analysis and pretesting before changing data-collection techniques. For example, there are several accepted methodologies for evaluating such changes:

> Research on methods to improve data quality *may* cover such areas as alternative methods for imputing values for missing data, alternative question wordings to reduce respondent reporting errors (based on cognitive methods), and alternative sources of data and ways for combining them to enhance quality. Methods for such research may include the use of "methods panels" (small samples for which experiments are conducted by using alternative procedures and questionnaires), matching with administrative records, and simulations of sensitivity to alternative procedures.

Nat'l Academies of Sciences, Eng'g & Medicine, *Principles & Practices for a Federal Statistical Agency* 114 (6th ed. 2017) (hereinafter "*Principles & Practices*"). "In ongoing programs for which it is disruptive to implement improvements on a continuing basis, a common practice is to undertake major

research and development activities at intervals of 5, 10, or more years." *Id.* Indeed, "[h]igh-quality surveys *always* provide adequate budget and time for pre-testing questionnaire(s) and field procedures," because "[a] pre-test of the questionnaire and field procedures is the only way of finding out if everything 'works' especially if a survey employs new techniques or a new set of questions." Am. Assoc. for Pub. Op. Research, *Best Practices for Survey Research* (last visited Apr. 1, 2019) (emphasis added).[4]

As the Bureau has explained, since 1970 it has "conducted content tests to research and improve the design and function of different questions." U.S. Census Bureau, *Content Research* (Jan. 11, 2017).[5] These tests seek "to ensure [that] census questionnaires are easily understood and reflect the population accurately." *Id.* Consider, for example, that the Bureau has been pretesting changes to questions about Hispanic origin and race for inclusion in the 2020 census *since 2010*. *Id.* And the Bureau has conducted annual "research and testing" phases *since 2013* to evaluate "fundamental changes to the design, implementation, and management of the decennial Census." U.S. Census Bureau, *2020 Census: Census Testing by Year* (last visited Apr. 1, 2019).[6] The Bureau has explained that it has engaged in this careful, methodical process to "maintain[ ] a disciplined and transparent acquisition decision process" and to "obtain evidence-based decisions." *Id.*

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[4] *Available at* https://bit.ly/2QbKzTW.

[5] *Available at* https://bit.ly/2DBFYJn.

[6] *Available at* https://bit.ly/2QZlEnI.

2. By March 2018, the Bureau had already launched its last field test for the 2020 census, in Providence, Rhode Island, again without including a citizenship question. *Id.* Yet the Department announced its plan to add a citizenship question to the 2020 census—for the first time in seven decades—on March 26, 2018, long after any changes to its testing could be made. Pet. App. 548a. The Department's eleventh-hour mandate to add the citizenship question, overriding the objections of the professionals at the Bureau, has left the Bureau with no choice but to forgo its standard procedures and to operate completely outside the bounds of standard practice and appropriate methodology. It is simply too late to conduct adequate pretesting of such a major reconfiguration of the census, as the Bureau's internal guidelines and statistical principles require. *Amici* are unaware of any previous example of such a potentially enormous and uncertain change to the census being made with such haste and lack of preparation. Unsurprisingly, the Department's insistence on moving forward with the citizenship question notwithstanding this violation of the Bureau's ordinary procedures drew a sharp response from its Chief Scientist, who concluded that adding a citizenship question "is very costly, harms the quality of the census count, and would use substantially less accurate citizenship status data than are available from other administrative sources." J.A. 105.

3. The Secretary nonetheless claimed that there is no evidence that implementing a last-minute change to the 2020 census will result in unreliable data. As discussed in more detail below, this is not true; evidence shows that adding a citizenship question will significantly affect both data accuracy and

response rates. But even crediting the Secretary's dubious claim, the Secretary's position flips the statistical "burden of proof" on its head, and is inconsistent with sound statistical practice. *See* Nat'l Academies of Sciences, Eng'g & Medicine, *Letter Report on the 2020 Census* 6 (Aug. 7, 2018).[7] Field testing potential survey questions is the *norm* for proper statistical inquiries, as the Bureau's own guidelines and professional statistical standards show; it is not some nicety that can be dispatched when inconvenient. *See* U.S. Census Bureau, *Statistical Quality Standards*, *supra* at 8, 12; Am. Assoc. for Pub. Op. Research, *Best Practices for Survey Research*, *supra*. The statistically valid approach requires great caution before adding a question, so that the Bureau—and all those who rely on the Bureau's historically excellent work—can proceed with confidence, knowing that the additional question will not skew or otherwise affect the validity of the data.

It is no answer to claim that the fact that the citizenship question was asked in the context of the American Community Survey (ACS) satisfies the Bureau's obligation to engage in adequate field testing. Pet. Br. 38–39. The ACS asks many questions; the decennial census asks only a few. The surveys have different aims: the decennial census seeks to generate an accurate population count, while the ACS provides a basis for obtaining more nuanced demographic data through sampling techniques. It is an established truth of statistical research design that context matters. A survey ques-

[7] *Available at* https://bit.ly/2AQivTr.

tion asked in one context might produce vastly different response rates if asked in another. Indeed, the Secretary has acknowledged that "response rates generally vary" between the ACS and the census. Pet. App. 553a. And it is little wonder. In contrast to the lengthy ACS, the decennial census seeks to collect "only the data necessary for a concise and condensed full population count." J. David Brown, et al., *Understanding the Quality of Alternative Citizenship Data Sources for the 2020 Census* 4 (2018).[8] Yet notwithstanding the acknowledged "widespread belief" that adding a citizenship question would reduce response rates, Pet. App. 554a, the Secretary insisted on moving forward without following ordinary statistical procedures.

In short, the Bureau has not conducted the type of careful pretesting that federal law, its own standards and professionally recognized statistical practices require. While it has spent nearly a decade testing other potential census questions, the Bureau has not spent one moment testing the citizenship question. And there is a significant risk that the addition of this untested question will strike fear into members of discrete populations, reducing census response rates in asymmetric fashion, and thus generating incomplete and inaccurate data.

B. The Citizenship Question Will Reduce Response Rates While Generating Incomplete And Inaccurate Answers.

The Bureau's addition of a citizenship question will also undermine, rather than promote, the accuracy of

[8] *Available at* https://bit.ly/2xIlDfR.

census data. Statisticians recognize that even seemingly innocuous additional survey questions can increase "respondent burden," that is, "[t]he degree to which a survey respondent perceives participation in a survey research project as difficult, time consuming, or emotionally stressful." Ingrid Graf, *Encyclopedia of Survey Research Methods*: *Respondent Burden* 739 (Paul J. Lavrakas ed., 2008).[9] "The researcher must consider the effects of respondent burden prior to administering a survey instrument, as too great an average burden will yield lower-quality data and is thereby counterproductive." *Id.*; *accord* Scott Fricker, U.S. Dept. of Labor Statistics, *Defining, Measuring, and Mitigating Respondent Burden* (Mar. 8, 2016). Adding any question to a survey increases respondent burdens and therefore risks reducing participation rates. Don A. Dillman et al., *Effects of Questionnaire Length, Respondent-Friendly Design, and a Difficult Question on Response Rates for Occupant-Addressed Census Mail Surveys*, 57 Pub. Opinion Q. 289 (1993) ("An experimental study of alternatives to the current US decennial census questionnaire demonstrated that shortening the questionnaire and respondent-friendly questionnaire design improve response, whereas asking a potentially difficult and/or objectionable question (i.e., social security number) lowers response.").

But adding a question on citizenship—one so fraught with emotional, psychological, and legal ramifications—will almost certainly increase respondent burdens by orders of magnitude, cause

[9] *Available at* https://bit.ly/2Imzih1.

significant declines in the response rate, and lead to a substantial undercount of immigrant populations, despite the Bureau's constitutional obligation to count *all* persons in the United States, citizen or otherwise. U.S. Const. art. I, § 2, cl. 3; *id.* amend XIV, § 2. As the Bureau's Chief Scientist has noted, "item nonresponse rates for the citizenship question [asked as part of the ACS] are much greater than the comparable rates for other demographic variables like sex, birthdate/age, and race/ethnicity." J.A. 110. The reason is obvious: questions about citizenship status are overwhelmingly sensitive. The Secretary's unsupported assertion that "limited empirical evidence exists about whether adding a citizenship question would decrease response rates materially," Pet. App. 557a, is directly contradicted by the data and conclusion cited by the Bureau's Chief Scientist. J.A. 110; *see also* Pet. App. 111a (discussing affidavit of Christine Pierce, Senior Vice President of Data Science for the Nielsen Company, stating that in her discussions with Secretary Ross she "explained that a lack of testing [on response rates] could lead to poor survey results."); Pet. App. 145a–146a (discussing the Bureau's Census Barriers, Attitudes, and Motivators Survey that in 2018 noted "'[t]he citizenship question may be a major barrier' in part because people believed that the census's 'purpose is to find undocumented immigrants.'"). Anecdotal evidence contradicting the Secretary's assertion is legion. *See, e.g.*, Hansi Lo Wang & Marisa Penaloza, *Many Noncitizens Plan To Avoid the 2020 Census, Test Run Indicates*, NPR (May 11, 2018).[10]

[10] *Available at* https://n.pr/2wSkLHF.

Indeed, the Bureau itself has explained this reality best, in terms that directly contradict the Secretary's current position. As the Bureau argued in *Federation for American Immigration Reform* v. *Klutznick*, 486 F. Supp. 564 (D.D.C. 1980): "Obtaining the cooperation of a suspicious and fearful population would be impossible if the group being counted perceived any possibility of the information being used against them. Questions as to citizenship are particularly sensitive in minority communities and would inevitably trigger hostility, resentment and refusal to cooperate." *Id.* at 568 (recounting the Bureau's position in that case). The suspicions and fears that the Bureau referred to in 1980 are no doubt even more acute today, when anti-immigrant sentiments run high and immigration-enforcement raids create enormous fear of deportation among immigrant communities. *See* J.A. 141–142, *Dep't of Commerce* v. *U.S. District Court for the S. District of New York*, No. 18-557 (U.S. Jan. 4, 2019) (Mem. from Ctr. for Survey Measurement to Assoc. Directorate for Research and Methodology (Sept. 20, 2017)) (observing that "CSM researchers have noticed a recent increase in respondents spontaneously expressing concerns about confidentiality" in 2017 pretesting studies, including "concerns about topics like 'the Muslim ban'" and "repeated references to Immigration and Customs Enforcement")[11]; *see also* Associated Press, *Hunger, Fear, Desperation: What Came of an Ordinary ICE Raid*, (July 9, 2018).[12] And because questions surrounding citizenship status are

[11] *Available at* https://bit.ly/2JTeOAI.

[12] *Available at* https://cbsn.ws/2zUs8Oo.

"known or anticipated to have tangible physical, financial, or psychological effects," ethical guidelines caution that statisticians use extra care when engaging in those analyses. Am. Statistical Ass'n, *Ethical Guidelines for Statistical Practice* H-3 (2018). Here, the Secretary's complete lack of care in choosing to add a citizenship question to the census will inevitably lower response rates.

Lower response rates, in turn, will jeopardize data accuracy. After examining "several Census Bureau surveys with and without citizenship questions," the Bureau has concluded that "households that may contain noncitizens are more sensitive to the inclusion of citizenship in the questionnaire than all-citizen households," and that "adding a citizenship question to the 2020 Census would lead to lower self-response rates in households potentially containing noncitizens, resulting in more nonresponse follow-up * * * fieldwork, more proxy responses, and a lower-quality population count." Brown et al., *supra* at 54.

Worse still, including the citizenship question in the decennial census is entirely unnecessary. The American Community Survey *already* measures the citizenship voting-age population and provides both the Justice Department and researchers like *amici* with sufficiently detailed data to study noncitizen populations, particularly when paired with other data sources, for example, records from federal administrative agencies such as the Social Security Administration. To the extent the Secretary claims that there will be any additional citizenship data generated among certain populations, Pet. Br. 32–33, that data is subject to a "high rate" of error, as the District Court correctly concluded. *See* Pet. App.

55a–57a. The Secretary's purported justification for the last-minute addition of a citizenship question is therefore especially dubious because, in addition to causing a number of serious negative effects, the added question will not have any offsetting benefits, as it will largely duplicate data that is already available for the same purpose.

Instead of engaging in the careful testing and evaluation required by the Bureau's guidelines, the Secretary insisted on injecting a controversial, untested question shortly before the 2020 census. There is no principled basis in professional statistical practice for this approach.

II. THE ACCURACY AND RELIABILITY OF CENSUS DATA ARE OF VITAL PUBLIC IMPORTANCE, AND ARE SERIOUSLY THREATENED BY INCLUSION OF THE CITIZENSHIP QUESTION.

Finally, the Court should be aware that the departure mandated by the Secretary from the Bureau's historical and professionally responsible practices will have enormous and adverse practical consequences. As this Court recognized in *U.S. House of Representatives*, although the decennial census was "originally established for the sole purpose of apportioning Representatives," it has "grown considerably over the past 200 years." 525 U.S. at 341. The information that the decennial census collects is vital to our Nation's growth and development, and provides the basic foundation for countless decisions made on a daily basis by the federal government, state and local governments, and private business alike. *Amici* are deeply troubled by any action taken to alter the census without proper testing and cali-

bration that threatens the accuracy and reliability of this data resource. Whether intended or not, the consequences are potentially enormous. *See* Haley Sweetland Edwards, *Why the Census Matters Now More than Ever*, Time (May 18, 2017).[13]

The census establishes the baseline for how seats in the House of Representatives are apportioned among the States and how electors to the Electoral College are allocated. *See generally* Nathaniel Persily, Book Review, *The Right to Be Counted Counting on the Census?*, 53 Stan. L. Rev. 1077, 1087–90 (2001). But the significance of the census is not limited to the political. The census determines where almost $700 billion in federal funding is directed, through numerous national, state, and local programs each year. *See* U.S. Census Bureau, *Decennial Census of Population and Housing: Why We Conduct the Decennial Census* (Oct. 19, 2017).[14] These programs include, among many others, the Highway Trust Fund and Urbanized Area Formula Funding programs, the Head Start program, Medicare, the Supplemental Nutrition Assistance Program, and Title I funding for low-income schoolchildren. *See* Jim Tankersley & Emily Baumgaertner, *Here's Why an Accurate Census Count Is So Important*, N.Y. Times (Mar. 28, 2018).[15] Long-term programs dependent on population changes over time, including Social Security, likewise rely heavily on census data. *See generally* Office of the Chief Actuary, Soc. Sec. Admin., The Long-Range Demo-

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[13] *Available at* https://ti.me/2qzlt7n.

[14] *Available at* https://bit.ly/2hvVrwz.

[15] *Available at* https://nyti.ms/2GlOtFk.

graphic Assumptions for the 2018 Trustees Report (June 5, 2018).[16]

Private businesses, nonprofit organizations, and government actors have likewise come to depend on the unique reliability and utility of census data when making all manner of economic, business, and strategic-planning decisions. It is widely acknowledged that "federal statistical agencies" like the Bureau have refined a set of practices that ensure the quality and impartiality of their data that make the data a uniquely valuable public resource. *See Principles & Practices*, *supra* at 1–2; *see also* Nicholas Eberstadt, et al., The Hamilton Project, "In Order That They Might Rest Their Arguments on Facts": The Vital Role of Government-Collected Data 1–4 (2017) ("Because the reports are of such value to the private sector and the public at large, financial markets carefully scrutinize them, reacting quickly to many of the releases.").[17]

The Bureau itself recognizes as much. On its own website, the agency rightly touts the Census Bureau Economic Programs, explaining how the detailed statistical information that the Bureau makes publically available have wide-ranging practical benefits. For example, the agency highlights how a new small business was able to use census data to identify a potentially viable location to manufacture and sell mountain-bike components in Portland, Oregon; how census data successfully enabled an Albuquerque, New Mexico entrepreneur to expand his restaurant

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[16] *Available at* https://bit.ly/2xUUeXk.

[17] *Available at* https://bit.ly/2xSCDzv.

business and secure a small-business loan; and how emergency-management officials in South Florida use census data to better prepare for the aftermath of severe weather. U.S. Census Bureau, *Economic Census: Uses of Data* (Apr. 3, 2018).[18]

Public access to that data is particularly crucial to the States and local governments that receive hundreds of billions of dollars a year in federal funds dependent on demographic, socioeconomic, and geographic factors. *See, e.g.*, Conn. Dep't of Public Health, Population Statistics Overview 23 (2019).[19] The State and local governments often partner on key support programs with institutions that rely on census data because they lack the means to generate such data independently. *See generally* Kate Cheyne, *Why The US Census is Important to Food Banks—and Why We Need To Protect It*, Alameda Cty. Cmty. Food Bank (Jan. 31, 2018) ("For nonprofits, policy makers, and advocates working to end food insecurity and hunger, [Census Bureau data is] our most comprehensive source of information on poverty rates, household incomes, cost of living, health insurance, nutrition assistance participation, and more.").[20]

Academic researchers also rely heavily on census data to better understand and evaluate numerous aspects of the world around us. Statisticians, demographers, economists, epidemiologists, and political scientists, among countless other social-science

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[18] *Available at* https://bit.ly/2R3aj5Y.

[19] *Available at* https://bit.ly/2CMeIoq.

[20] *Available at* https://bit.ly/2xFphHi.

professionals, have long used census data as a key tool for generating knowledge. Robert P. Swierenga, *Historians and the Census: The Historiography of Census Research*, 50 The Annals of Iowa 650 (1990). Use of census data has generated a wide range of statistical innovations. Recent advances in statistical analysis, computing, and data analytics have only bolstered that crucial utility. Leading research institutions around the world recognize the vital uses of census data. The University of Minnesota,[21] Amherst College,[22] the Dartmouth College Library,[23] and New York University,[24] for example, all make available special training materials and aggregate various sources of census data to use in research across a wide range of disciplines. So does the Bureau itself. Recognizing the range of uses to which census data may be put, the Bureau has recently offered a series of informational videos and provides a channel of communication with agency experts for teachers, students, researchers, and the public generally. *See* U.S. Census Bureau, *Census Academy: Free courses on how to use Census data* (last visited Apr. 1, 2019).[25]

Libraries nationwide similarly provide access to census data through activities such as data-user trainings and by referring researchers, students, businesses, government agencies, and community organizations to census products. Librarians can feel

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[21] *Available at* https://bit.ly/2QZf7IQ.

[22] *Available at* https://bit.ly/2IlLkas.

[23] *Available at* https://bit.ly/2Dz6Tpc.

[24] *Available at* https://bit.ly/2xGMaKG.

[25] *Available at* https://bit.ly/2N3PUKY.

confident in the integrity and quality of census data in large part because of the layers of constitutional, statutory, and regulatory protections that safeguard the accuracy and integrity of that data. But the addition of the citizenship question violates those critical protections, and thus threatens to undermine professional confidence in the continued reliability and utility of that data—public confidence that, once lost, would be very difficult to regain.

The knowledge and analysis enabled by census data informs untold aspects of policymaking, both directly and indirectly, and carries real-world consequences. Though these downstream effects may be difficult to quantify, they too are worthy of significant consideration. Each of these critical uses of census data would be severely undermined if the data's integrity were to falter. The potential consequences are enormous. In addition to political malapportionment and potentially billions of dollars in misdirected government funding, the private sector and the academy—and all of us who rely on these institutions—would be forced to make decisions in the face of uncertain or known-to-be-incorrect baseline assumptions.

Finally, informed decisionmaking requires accurate information. But more information (produced by adding an additional question) is *not* the same thing as better information. On the contrary, if the method used to generate that additional information taints the validity of the collection process, the value of future census data will suffer harm. There is no evidence-based reason to believe that the Department can add a citizenship question to the 2020 census without compromising the accuracy and reliability of the overall data. At the very least, the

inherent uncertainty of moving forward with that question would undermine the widespread trust that has long been the hallmark of Census Bureau data. Any marginal benefit from the answers to the citizenship question would be far outweighed by the asymmetric effects on political representation, funding decisions, and academic and policy research.

CONCLUSION

For the foregoing reasons, the District Court's decision below should be affirmed, and Secretary Ross should be enjoined from adding the proposed citizenship question to the 2020 decennial census.

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